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## REMARKS

### Objection to specification

The objection is submitted to be moot because page 12 of the specification is amended to, as the examiner noted in the Office Action, page 3, paragraph 5, that applicants intended to improve the DOI. Amended page 12 now discloses an improved Class A surface.

### Rejection of claims 60-63 and 65 under 35 USC 112, first paragraph

The rejection is submitted to be moot because claim 60 is amended to recite the thickness of the film or sheet and claims 61-65 are now cancelled.

### 10 Rejection of claims 69-70 under 35 USC 112, first paragraph

The rejection is submitted to be moot because claim 69-70 is amended to recite the DOI of at least 80 as previously presented.

### Rejection of claims 65 under 35 USC 112, second paragraph

The rejection is submitted to be moot because claim 65 is now cancelled.

### 15 Rejection of claims 69-72 under 35 USC 102(e) over Smith (US6319438)

The rejection is submitted to be moot because these claims recite a DOI of at least 80. As the examiner noted, Smith discloses DOI of at least 60 units, where 100 is the maximum reading measured by Hunter Lab meaning the maximum DOI measure by Hunter Lab is 100, but it does not disclose that the products shown therein have an DOI of maximum value of 100 or at least 80, as recited in applicants' claims.

### 20 Rejection of claims 1, 3, 6, 43, 54-55, 57-63 (61-63 cancelled), 65-68 (65 now cancelled), and 83-84 under 35 USC 103(a) over JP04345828 (JP'828)

The rejection is traversed because JP'828 does not suggest a thermoformable film or sheet required in applicants' claims.

25 Applicants requested a professional translation of JP'828 and a copy (JP1992-345828(A)) is attached herewith.

Applicants do not dispute that JP'828 discloses a first outer layer selected from EVA, VLDPE, or mixtures thereof; a core layer of ionomer or a blend with EVA, EMAA, or EAA; and a second outer layer selected from EMAA, EAA, and ionomer.

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As the title page discloses, the purpose (JP'828) is to provide a multilayer film excellent in shrinkage and resistance against rough use and used as a container or package.

To the contrary, applicants' claims specifically call for a thermoformable film or sheet, which is patentably distinct from a heat shrinkable film.

In Paleari (US5622780, listed in an IDS applicants previously submitted on 09/05/2006), both heat shrinkable film and thermoformable film are defined. A heat shrinkable film is defined as "oriented film which shrinks by at least 10% in at least one direction at 85°C" (column 2, lines 49-51). A thermoformable film is defined as a "film suitable to be used in a vacuum or compressed air forming or plug assist vacuum or compressed air forming method. ... the term 'thermoformable film' is intended to refer to a *rigid* thermoformable sheet which is thermoformed by the above conventional methods" (column 2, line 57 to column 4, line 18).

The two film types are further distinguished (heat shrinkable films disclosed in column 7, line 38 to column 8, lines 36 and thermoformable films disclosed in column 8 lines 37-59).

Also submitted on 09/05/2006 is Lustig (US4863784), which discloses a coextruded heat shrinkable multilayer film for packaging fresh red meat. To be heat shrinkable, "the film must be biaxially stretched in order to produce shrinkage characteristics sufficient for the film to heat shrink within a specified range of percentages, e.g., from about 15 to 60% at about 90°C" (column 2, lines 35-40 ).

Based on Paleari disclosure, applicants' claims, reciting thermoformable film or sheet, are not obvious over the JP'828 disclosure, which does not suggest a thermoformable film or sheet.

Furthermore, a packaging film such as disclosed in JP'828 is clear and see-through for packaging food such as, for example, meat to allow consumers to clearly identify the food packaged therein. Therefore, JP'828 cannot and does not suggest that an additive such as pigment be included in one or more layers of the film.

Claim 6 and its dependent claims further distinguish over JP'828 in reciting first co-extruded layer being clear and second co-extruded polymeric layer comprises the polymer and an additive selected from pigment, dye, flake, or mixtures thereof.

Claim 43 further distinguishes over JP'828 in reciting that the film is adhered to a substrate.

Claims 66-68 further distinguish over JP'828 in reciting the ionomer in reciting that the first co-extruded polymeric layer and the ionomer in the second co-extruded polymeric layer must have flow properties to allow the ionomer in the first co-extruded layer and the ionomer in the second co-extruded polymeric layer, when  
5 co-extruded, to flow to the full width of the die.

Claims 69-72 further distinguish over JP'828 in reciting the ionomer in reciting DOI of at least 80 and a gloss that exceeds 60% at a 20 degree angle.

Claim 82 further distinguishes over JP'828 in reciting that the substrate is metal, polymer, or polymer composite.

10 Claim 83 further distinguishes over JP'828 in reciting that the substrate is metal, polymer, or polymer composite and the multilayer film or sheet is clear.

Rejection of claims 1, 3, 6, 43, 54-55, 57-63 (61-63 cancelled), 66-68, and 83-84 under 35 USC 103(a) over Flieger (US5789048)

The examiner rejected the claims because Flieger discloses that thickness of  
15 70-125 microns "should be" enough for a 25 Kg bag. However, the 25 kg bag is the only bag contemplated in Flieger because it expressly discloses, column 1, lines 16-30, that a 25 kg bag is the bag typically used in the packaging polymeric products and elastomer and a heavy duty bag is required for such packaging. No heavier bags are required. Flieger therefore discloses the heavy duty bag as having 70-125 microns  
20 thick, nothing other than this thickness is implied because, from the four corners of Flieger disclosure, it does not appear that Flieger suggests that any thicker film is needed. Therefore, Flieger cannot suggest the thickness recited in applicants' claims.

Alternatively, pursuant to MPEP 2126.01, which provides that the date of the patent is available as a reference is generally *the date that the patent becomes*  
25 *enforceable (italics applicants')*. The date the Flieger patent became enforceable on August 4, 1998.

MPEP 2141.01 provides that . . . an obviousness rejection based on a publication which would be applied under 102(a) if it anticipates the claims can be overcome by *swearing behind the publication date* of the reference by filing an  
30 affidavit or declaration under 37 CFR 1.131 (*italics applicants'*).

Pursuant to these MPEP guidelines, co-inventor Lori Pike resubmits a Rule 131 declaration, which is the same as the Rule 131 declaration submitted by Pike dated 03/30/2007 with the exception that the invention date (conception and reduction

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to practice) sworn behind is before the critical date of August 4, 1998 (Flieger patent date).

According to MPEP 2126.01, Flieger cannot be a reference.

5 Claim 6 and its dependent claims further distinguish over Flieger in reciting first co-extruded layer being clear and second co-extruded polymeric layer comprises the polymer and an additive selected from pigment, dye, flake, or mixtures thereof. Flieger, as the examiner noted, the inner layer is pigmented (black).

Claim 43 further distinguishes over Flieger in reciting that the film is adhered to a substrate.

10 Claims 57-60 further distinguish over Flieger in reciting film or sheet thicker than 8 mils.

Claims 66-68 further distinguish over Flieger in reciting the ionomer in reciting that the first co-extruded polymeric layer and the ionomer in the second co-extruded polymeric layer must have flow properties to allow the ionomer in the  
15 first co-extruded layer and the ionomer in the second co-extruded polymeric layer, when co-extruded, to flow to the full width of the die.

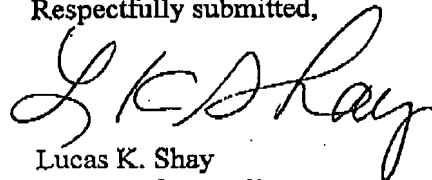
Claims 69-72 further distinguish over Flieger in reciting the ionomer in reciting DOI of at least 80 and a gloss that exceeds 60% at a 20 degree angle. As the examiner noted, packaging film does not require DOI or glossy surface.

20 Claim 82 further distinguishes over Flieger in reciting that the substrate is metal, polymer, or polymer composite.

Claim 83 further distinguishes over Flieger in reciting that the substrate is metal, polymer, or polymer composite and the multilayer film or sheet is clear.

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Respectfully submitted,



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